

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA §
§
v. § CRIMINAL NO. 4:08CR213 RAS/DDB
§
KIMBERLY DENISE SIMMONS §

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release.

After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on January 6, 2015 to determine whether Defendant violated her supervised release. Defendant was represented by Frank Henderson. The Government was represented by Camelia Lopez.

On May 19, 2009, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 10 months imprisonment followed by a 3-year term of supervised release for the offense of conspiracy to fraudulently use unauthorized access device. The term of supervised release was revoked on January 28, 2013, and Defendant was sentenced to 21 months of imprisonment followed by an additional 15 months of supervised release. Defendant began her term of supervision originally on March 10, 2010. Following her revocation, the new term of supervised release started on July 16, 2014

On November 3, 2014, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 41). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal,

state, or local crime; (2) Defendant shall refrain from any unlawful use of a controlled substance; (3) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (4) Defendant shall abstain from the use of alcohol and drugs while on supervised release; and (5) Defendant shall participate in a program of testing and treatment for alcohol and drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is release from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On or about October 19, 2014, Defendant was arrested by the Garland, Texas, Police Department for the offense of theft under \$1,500 with two or more previous convictions. It is alleged she concealed multiple items of merchandise at Wal-Mart and exited the store without paying for the merchandise. Defendant remains in the Dallas County Jail under Case No. F1424834. Bond was set at \$3,500.00; (2) Defendant submitted urine specimens at the U.S. Probation Office on September 8 and 17, 2014, which were confirmed positive for cocaine; (3) Defendant failed to submit a random drug test on September 16, 2014.

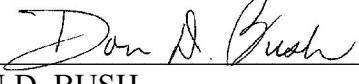
At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived her right to allocute before the district judge and her right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of her supervised release.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the January 6, 2015 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty one (21) months with no

supervised release to follow to run concurrently with any state sentences being served. The Court recommends the FCI Carswell facility, if appropriate.

SIGNED this 14th day of January, 2015.


DON D. BUSH
UNITED STATES MAGISTRATE JUDGE